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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 126.

D. MARX, APPELLANT,

vs.

WILLIAM M. EBNER AND THE EBNER GOLD MINING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

FILED AUGUST 26, 1899.

(17,499.)

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1 In the District Court of the United States for the District of Alaska.

D. MARX, Plaintiff,
vs.
THE EBNER GOLD MINING COMPANY and W. M. EBNER, Defendants.

Complaint.

D. Marx, the above-named plaintiff, complains of the Ebner Gold Mining Company and W. M. Ebner, the defendants herein named, and for cause of suit against said defendants alleges:

I.

That the defendant The Ebner Gold Mining Company is a corporation duly organized and existing within the district of Alaska.

II.

That on the 2nd day of August, 1889, the Takou Mining and Milling Company was a corporation organized under the laws of Oregon, and on said 2nd day of August, 1889, was the owner and in possession of the following-described property, mines, mining property, mill, and appliances, viz:

All the following-described leads, lodes, and mining claims and real property lying and being on the east side of Gold creek, in the Harris mining district and in the Juneau recording district of Alaska, viz., "the relocated Pilz No. 2," the "Jewel" Lode claim; also the "Grand Review" Lode claim; also the "Golden Place" Lode claim; also the "Lotta" Lode claim; also the "Keystone" Lode claim; also the "Juneau" Lode claim; also the "Crown Point" Lode claim; also the "Gold Mill" Lode claim; also the "Capital" Lode claim; also the "Takou Gold and Silver" Lode claim; also the "Takou Union" Lode claim.

III.

That on said 2nd day of August, 1889, the said Takou Mining and Milling Company for a valuable, good, and sufficient consideration made, executed, and delivered to Samuel Coulter its promissory note for the sum of ninety-eight thousand four hundred and
2 five and $\frac{91}{100}$ dollars ($98,405.91), payable ninety days from the date thereof, and in order to and for the purpose of securing the payment of said note according to the terms thereof the said Takou Mining and Milling Company duly made, executed, and delivered to said Samuel Coulter a mortgage upon said property hereinbefore described.

IV.

That said note and mortgage were both executed and delivered to said Samuel Coulter in accordance with and pursuant to a resolu-

tion of the board of directors of said Takou Mining and Milling Company theretofore duly made and passed.

V.

That thereafter and on the 1st day of April, 1893, said Takou Mining and Milling Company, in accordance with a resolution of its board of directors, made, executed, and delivered to Sylvester Farrell a good and sufficient deed of conveyance of all the property hereinbefore described, except the relocated Pilz No. 2 Lode claim, the Juneau Lode claim, the Golden Place Lode claim, the Capital Lode claim, and the Takou Union Lode claim, which said deed was entitled to be and was duly recorded in the Juneau recording district of Alaska on the 9 day of Sept., 1893.

VI.

That thereafter and on or about the 1st day of September, 1893, said Samuel Coulter, for a valuable consideration, sold and assigned said note and mortgage executed by the Takou Mining and Milling Company to Samuel Coulter, as hereinbefore alleged, to Willis Thorp.

VII.

That thereafter said Thorp, desiring and intending to fore-
3 close said mortgage, did on December 21, 1893, file with the clerk of the district court for the district of Alaska a paper intended as a complaint, of which the following is a copy, viz:

In the United States District Court for the District of Alaska.

WILLIS THORP, Plaintiff.
vs.
THE TAKOU MINING AND MILLING COMPANY, a Corporation, and Sylvester Farrell, Defendants.

The plaintiff complains and alleges:

1.

That the defendant Takou Mining and Milling Company is a private corporation organized and existing under and by virtue of the laws of the State of Oregon, having its principal place of business in the city of Portland, in said State, and having its mines and quartz stamp mill in the district of Alaska, on the premises herein described.

2.

That on the 20th day of August, 1889, at Portland, Oregon, the defendant the said Takou Mining and Milling Company made its promissory note, bearing date on that day, in the words and figures following, to wit:

$98,405.91. PORTLAND, OREGON *August* 20, 1889.

Ninety days after date, without grace, the Takou Mining and Milling Company promises to pay to the order of Samuel Coulter, at Portland, Oregon, the sum of ninety-eight thousand four hundred and five and $\frac{91}{100}$ ($98,405.91) dollars in gold coin of the United States of America, with interest thereon in like gold coin, at the rate of eight per cent. per annum, from date until paid, for value received, and in case suit or action is instituted to collect this
4 note or any portion thereof the said company promises to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said suit or action.

THE TAKOU MINING AND
MILLING COMPANY,
By SAMUEL COULTER, *President.*
THE TAKOU MINING AND
MILLING COMPANY,
By W. T. HUME, *Secretary.*

3.

That the said defendant, said Takou Mining and Milling Company, to secure the payment of said principal sum and the interest thereon, as mentioned in said note, according to the tenor thereof, did execute under its corporate seal and by order of the board of directors of said defendant, the said Takou Mining and Milling Company, and deliver to said Samuel Coulter, mortgagee, a certain mortgage bearing date the 20th day of August, 1889, and conditioned for the payment of said sum of $98,405.91, and interest thereon at the rate and at the time and in the manner specified in said note and according to the conditions thereof; which said mortgage was duly acknowledged and certified so as to entitle*d* it to be recorded, and the same was afterwards, to wit, on the 9th day of September, 1889, recorded in the office of the recorder for the Juneau recording district, Alaska, in Liber "E," on page 485, a copy of which said mortgage, with the indorsements thereon, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

(3.)

That on the first day of September, 1893, the said Samuel Coulter, mortgagee, granted, bargained, sold, assigned, transferred, and set over unto the plaintiff herein the said mortgage hereinbefore mentioned and marked "Exhibit A;" which said assignment of said mortgage was duly executed and acknowledged and certified so as to entitle it to be recorded, and the same was afterwards, to wit, on the 20th day of November, 1893, recorded in the office of the recorder for said Juneau recording district, Alaska, in Liber "O," on
5 page 681, a copy of which said assignment of said mortgage, with the indorsements thereon, is hereunto annexed, marked "Exhibit B," and made a part of this complaint.

(4)

That on or about the first day of April, 1893, the said defendant, The Takou Mining and Milling Company, granted, bargained, sold, and conveyed to the defendant Sylvester Farrell the following-named lode mining claims, mill sites, and water right described in said mortgage, to wit, the Jewel Lode claim, the Grand Review Lode claim, the Golden Fleece Lode claim, the Lotta Lode claim, the Keystone Lode claim, the Crown Point Lode claim, and the Takou Gold and Silver Lode claim, together with all and singular the mill sites, flumes, and water rights to said lode claims belonging and held in connection therewith, which said conveyance or deed was recorded in the office of the recorder of said Juneau recording district on the 9th day of September, 1893, in Liber "O," on page 619, a copy of which said deed or conveyance, with the indorsements thereon, is hereunto annexed, marked "Exhibit C," and made a part of this complaint.

(5.)

That no proceedings have been had at law or otherwise for the recovery of said money or any part thereof.

(6.)

That the principal sum mentioned in said promissory note and mortgage, together with the interest thereon, at the rate of eight per cent. per annum, from the 20th day of August, 1889, has not been paid by said defendants, nor any part thereof.

(7.)

That the plaintiff is now the lawful owner and holder of said promissory note and mortgage.

(8.)

That by reason of the foreclosure proceedings herein the plaintiff was compelled to incur the expense of the sum of $250.00 for attorneys' fees.

Wherefore the plaintiff prays judgment against the said
6 defendants:

First. For the sum of ninety-eight thousand four hundred and five and $\frac{91}{100}$ dollars, with interest, at the rate of eight per cent. per annum, from the 20th day of August, 1889, together with $250.00 attorneys' fees and for costs of suit.

Second. That the usual decree may be made for the sale of said premises by the U. S. marshal for the district of Alaska according to law and the practise of this court; that the proceeds of said sale may be applied in payment of the amount due to plaintiff, and that said defendants and all persons claiming under them or either of them subsequent to the execution of said mortgage upon said premises, either as purchasers, incumbrancers, or otherwise, may be barred and foreclosed of all right, claim, or equity of redemption in the said premises and every part thereof, and that the said plaintiff may have

judgment and execution against said defendant, said Takou Mining and Milling Company, for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the satisfaction of said judgment.

Third. That the plaintiff or any other party to the suit may become a purchaser at said sale; that the U. S. marshal execute a deed to the purchaser; that the said purchaser be let into the possession of the premises on production of the U. S. marshal's deed therefore, and that plaintiff have such other or further relief in the premises as to this court may seem meet and equitable.

JOHN G. HEID,
Attorney for Plaintiff.

UNITED STATES,)
District of Alaska,) ss:

John G. Heid, being first duly sworn, says: I am the attorney of the plaintiff in this suit. I have read the foregoing complaint and know the contents thereof, and the same is true of my own knowledge except as to the matters therein averred to be upon information and belief, and as to these matters I believe it to be true; that the material allegations of the complaint are within my personal knowledge.

The reason why the verification is not made by the plaintiff is that he is not within the district of Alaska, which is the district where I reside.

JOHN G. HEID.

Subscribed and sworn to before me this 18th day of December, 1893.

[NOTARIAL SEAL.]

F. D. KELSEY,
Notary Public for Alaska.

"EXHIBIT A."

This indenture, made this 20th day of August, A. D. 1889, by and between the Takou Mining and Milling Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, party of the first part and Samuel Coulter, of the city of Portland, Oregon, party of the second part,

Witnesseth: that the said party of the first part for and in consideration of the sum of ninety-eight thousand four hundred and five and $\frac{91}{100}$ (98,405.91) dollars, to *wit* in hand paid, receipt whereof is hereby acknowledged has bargained, sold, assigned, conveyed and confirmed and by these presents does hereby bargain, sell, assign, transfer, convey and confirm unto the said party of the second part, his heirs and assigns forever all and singular all its rights, title and interest in and to the following-described leads, lodes, and mining claims situated, lying and being in the east side of Gold creek, in Harris mining district, and district of Alaska, to wit:

8 The "Relocated Pilz No. 2" Lode claim, recorded in Book I of Quartz Locations on page 9, of the records of said Harris mining district; also the "Jewel" Lode claim, recorded in Book I of Quartz Locations on page —, of the records of said Harris mining district; also the "Grand Review" Lode claim recorded in Book I of Quartz Locations on page 23, of the records of said Harris mining district; also the "Golden Fleece" Lode claim recorded in Book I of Quartz Locations on page 59 of the records of said Harris mining district; also the Lotta Lode claim, recorded in said Book I of Quartz Locations on page —, of the records of said Harris mining district; also the Keystone Lode claim recorded in Book B of records on page 20, of the records of said Harris mining district; also the Juneau Lode claim, recorded in said Book B of Records on page 21, of said records of said Harris mining district; also the Crown Point Lode claim, recorded in said Book B of Records on page 35, of said records of said Harris mining district; also the Gold Hill Lode claim, recorded in said Book B, of Records on page 36 of records of said Harris mining district; also the Capital Lode claim, recorded in said Book B of Records on page 62 of said records of said Harris mining district; also the Takou Gold and Silver Lode claim, recorded in Book A of Records on page 56 and 118, respectively, of the records of said Harris mining district; also the Takou Union Lode claim, recorded in Book A of Records, on page 56 and 118, respectively, of the records of said Harris mining district, less 10 feet in and to said Takou lode owned by Selim E. Woodworth. For greater certainty of description of said lode claim reference is hereby made to said records of said Harris mining district;

Together with all and singular the mill sites, flumes and water rights, dips, spurs and angles and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and

9 profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first — of, in or to said premises and every part and parcel thereof with the appurtenances.

To have and to hold the above-described premises together with the appurtenances and privileges thereunto incident unto the said Samuel Coulter, his heirs and assigns forever.

This conveyance is intended as a mortgage to secure the payment of the sum of ninety-eight thousand four hundred and five and $\frac{91}{100}$ ($98,405.91) dollars, in accordance with the tenor of a certain promissory note, of which the following is substantially a copy, to wit:

$98,405.91. PORTLAND, OREGON, *August* 20, 1889.

Ninety days after date without grace the Takou Mining and Milling Company promises to pay to the order of Samuel Coulter, at

Portland, Oregon, the sum of ninety-eight thousand four hundred and five and $^{91}_{100}$ (98,405.91) dollars, in gold coin of the United States of America, with interest thereon in like gold coin, at the rate of eight per cent. per annum from date until paid, for value received; and in case suit or action is instituted to collect this note or any portion thereof the said company promises to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said suit or action.

THE TAKOU MINING AND MILLING COMPANY,
By SAMUEL COULTER, *President.*
THE TAKOU MINING AND MILLING COMPANY,
By W. T. HUME, *Secretary.*

Now, therefore, if the said promissory note, principal and interest, shall be paid at maturity, according to the terms thereof this indenture shall be void, but in case default shall be made in the payment of the principal or interest as above provided, then and in that case the whole sum, both principal and interest accrued at the time default is made, shall become due and payable and the party of the second part, his executors, administrators and assigns are hereby empowered to foreclose this mortgage in the manner prescribed by law.

And the party of the first part for itself, its successors and assigns does hereby covenant, promise and agree to pay unto said party of the second part, his executors, administrators and assigns the said sum of money as in said note provided.

In testimony whereof, the said Takou Mining and Milling Company has by resolution of its board of directors, caused these presents to be executed by its president and secretary and its corporate seal to be affixed this the 20th day of August, A. D. 1889.

THE TAKOU MINING AND MILLING COMPANY,
[CORPORATE SEAL.] By SAMUEL COULTER, *President.*
THE TAKOU MINING AND MILLING COMPANY,
By W. T. HUME, *Secretary.*

Executed in presence of—
R. G. MORROW.
GEO. H. DURHAM.

STATE OF OREGON, }
Multnomah County, } *ss:*

Be it remembered that on this 20th day of August, A. D. 1889, before me, the undersigned, a notary public in and for the State and county aforesaid, personally appeared Samuel Coulter, president of the Takou Mining and Milling Company, and W. T. Hume, secretary of said Takou Mining and Milling Company, whose names are subscribed to the foregoing instrument as parties thereto and as

president and secretary of said company, both personally known to me to be the individuals named and described in and who executed the said instrument, and they severally acknowledged to me that he, the same Samuel Coulter, as president, and he, the said W. T. Hume, as secretary, of the said The Takou Mining and Mill-
11 ing Company executed the foregoing instrument as and for the act and deed of said The Takou Mining and Milling Company freely and voluntarily and for the uses and purposes therein mentioned, and he, said W. T. Hume, being by me first duly sworn, did depose and say that he is the secretary of the said The Takou Mining and Milling Company, and resides at Portland, Oregon; that he — the legal custodian of and is acquainted with and has in his possession the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so fixed by him as secretary of said company on the 20th day of August, A. D. 1889, by order of the board of directors of said company, and that he signed his name thereto by the like order of the board of directors of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this the day and year in this certificate first above written.

[NOTARIAL SEAL.] R. G. MORROW,
Notary Public for Oregon.

(Endorsed:) Mortgage. The Takou Mining and Milling Company to Samuel Coulter. Dated August 20th, 1889.

DISTRICT OF ALASKA, } ss:
Juneau Recording District, }

The within instrument was filed for record at 4.10 o'clock p. m., September 9th, 1889, and duly recorded in Book E, on page 485, of the records of said district.

LOUIS L. WILLIAMS.

12 "EXHIBIT B."

Know all men by these presents, that Samuel Coulter, of Portland, Oregon, the party of the first part, for and in consideration of the sum of two thousand dollars, gold coin of the United States of America, to him in hand paid by Willis Thorp, of Juneau, in the Territory of Alaska, the party of the second part, the receipt of which is hereby acknowledged has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the 20th day of August, A. D. one thousand eight hundred and eighty-nine made and executed by the Takou Mining and Milling Company, a corporation, by Samuel Coulter, its president and W. T. Hume, its secretary, to the said party of the first part, to secure the payment of the sum of ninety-eight thousand four hundred five and $\frac{91}{100}$ ($98,405.91) dollars, together with the note or obligation therein described and the

money due, or to grow due thereon, with the interest; which said indenture of mortgage was recorded in the office of the district recorder of the Juneau recording district in the district of Alaska in Book E of the records of said district, page 485 on the 9th day of September A. D. 1889.

To have and to hold, the same unto the said party of the second part, his executors, administrators and assigns, for his use and benefit, subject only to the proviso in said indenture of mortgage mentioned.

And the said party of the first part does hereby covenant to and with the said party of the second part that the said party of the first part is the lawful owner and holder of the said note and mortgage, and that he has the right to sell, transfer and assign the same as aforesaid, and that there is now due and owing upon the said
13 note and mortgage the sum of ninety-eight thousand and four hundred five and $\frac{91}{100}$ dollars with interest from the 20th day of August A. D. one thousand eight hundred and eighty-nine.

In witness whereof the said party of the first part has hereunto set his hand and seal the — day of ——, A. D. one thousand eight hundred and ninety-three.

SAMUEL COULTER.

Signed, sealed, and delivered in the presence of—
JOHN H. HALL.
JOS. W. SCHNABEL.

STATE OF OREGON, }
County of Multnomah, } *ss*:

This certifys that on this first day of November, A. D. 1893, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Samuel Coulter, personally known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that — executed the same, and there acknowledged to me that he executed the same freely and voluntarily and without fear, coersion, or compulsion from any one.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL.]

JOHN H. HALL,
Notary Public for Oregon.

Endorsed.

DISTRICT OF ALASKA, }
Juneau Recording District, } *ss*:

The within instrument was filed for record at 10.20 o'clock a. m., November 20th, 1893, and duly recorded in Book O, on page 681, of the records of said district.

Compared.

W. R. HOYT,
District Recorder.

14 "EXHIBIT C."

Know all men by these presents, that the Takou Mining and Milling Company, a corporation organized and existing under the laws of the State of Oregon, having its principal place of business at the city of Portland in the State of Oregon, in consideration of the sum of twenty-five thousand dollars to *w*it in hand paid by Sylvester Farrell, has bargained and sold and by these presents does grant, bargain, sell and convey unto the said Sylvester Farrell, his heirs and assigns, all the following-described leads, lodes and mining claims and real property, lying and being on the east side of Gold creek in Harris mining district, and district of Alaska, to wit: All that certain lead, lode and mining claim known as the "Jewel" Lode claim, recorded in Book "I" of Quartz Locations on page — of said records of said Harris mining district; also the "Grand Review" Lode claim, recorded in Book "I" of Quartz Locations on page 23 of the records of said Harris mining district, also the "Golden Fleece" Lode claim, recorded in Book "I" of Quartz Locations on page 59 of records of said Harris mining district, also all of the "Lotta" Lode claim, recorded in Book "I" of Quartz Locations on page — of records of said Harris mining district, also all of the "Keystone" Lode claim, recorded in Book "B" of Records on page 20 of the records of said Harris mining district; also all of the "Crown Point" Lode claim, recorded in said Book "B" of Records on page 35 of said records of said Harris mining district; also the Takou "Gold and Silver" Lode claim, recorded in Book "A" of Records on page 56 and 118, respectively, of the records of said Harris mining district, and for greater certainty of description of said lode claim, reference is hereby made to said records of said Harris mining district.

Together with all and singular, the mill sites, flumes and water rights, dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz rock and earth therein, and all the rights, privileges and franchises thereto incident, appending and appurtaining or therewith usually had and enjoyed, and also all and singular the tenements and hereditaments and appurtenances thereunto belonging or in anywise appurtaining and the rents, issues and profits thereof, and also all the estate, right, title, property, possession, claim and demand whatsoever, as well in law as in equity of the said Takou Mining and Milling Company to the said premises and every part and parcel thereof.

To have and to hold the above-described premises, together with the appurtenances and privileges thereto incident unto the said Sylvester Farrell, his heirs and assigns forever, and the said Takou Mining and Milling Company, a corporation, as aforesaid, *it is* hereby covenanted to and with said Sylvester Farrell, his heirs and assigns, that it will and its successors and assigns shall warrant and forever defend the above-granted premises, privileges, leads and lodes and mining claims and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

In witness whereof the said Takou Mining and Milling Company has by resolution of its board of directors caused these presents to be executed by its president and secretary and its corporate seal to be hereunto affixed this 1st day of April, 1893.

TAKOU MINING AND MILLING COMPANY,

[SEAL.] By SAMUEL COULTER, *President.*

TAKOU MINING AND MILLING COMPANY,

By W. T. HUMES, *Secretary.*

Signed, sealed, and delivered in presence of—

JOS. W. SCHNABEL.
J. J. FITZGERALD.

16 STATE OF OREGON, } ss:
County of Multnomah, }

Be it remembered that on this 1st day of April, before me, the undersigned, a notary public in and for the county of Multnomah, State of Oregon, duly commissioned and qualified, personally came Samuel L. Coulter, president, and W. T. Hume, secretary, of the Takou Mining and Milling Company, whose names are subscribed to the foregoing instrument as parties thereto, and as such president and as such secretary of said Takou Mining and Milling Company, both personally known to me to be the individuals named and described in and who executed the said instrument, and they severally acknowledged to me that he, the said Samuel L. Coulter, as such president, and he, the said W. T. Hume, as such secretary, of the Takou Mining and Milling Company, executed the foregoing instrument as such, and for the act and deed of said Takou Mining and Milling Company, freely and voluntarily for the uses and purposes therein mentioned; and he, the said W. T. Hume, being by me duly sworn, did depose and say that he is the secretary of the Takou Mining and Milling Company and resides at Portland, Oregon; that he is the legal custodian and is acquainted with and has in his possession the corporate seal of the Takou Mining and Milling Company; that the seal affixed to the foregoing instrument is said corporate seal; that the same was affixed by him as such secretary of said company on the 1st day of April, A. D. 1893, by order of the board of directors of said company, and that he signed his name thereto by the like order of the board of directors of said company.

In witness whereof I have hereunto set my hand and affixed my official seal, at Portland, Oregon, the date first above written.

[NOTARIAL SEAL.] JOS. W. SCHNABEL,
Notary Public for Oregon.

17 *Warranty Deed.*

Takou Mining and Milling Company
to
Sylvester Farrell.

DISTRICT OF ALASKA, }
Juneau Recording District. }

The within instrument was filed for record at 11 o'clock a. m. September 9th, 1893, and duly recorded in Book "O," on page 619, of the records of said district.

W. R. HOYT,
District Recorder.

(Said complaint is endorsed as follows:) No. 393. In U. S. district court for the district of Alaska. Willis Thorp, plaintiff, *vs.* Takou Mining & Milling Co., Sylvester Farrell, defendants. Complaint. Filed Dec. 21, 1893. N. R. Peckinpagh, clerk. Office of John G. Heid, attorney, Juneau, Alaska.

That on December 21, 1893, the clerk of said court issued and delivered to the marshal of said district a paper, and the marshal on January 2, 1894, returned said paper to the said clerk with said marshal's return thereon, as appears by said paper, a copy of which paper and return is as follows, viz:

In the United States District Court for the District of Alaska.

WILLIS THORP *vs.* THE TAKOU MINING AND MILLING COMPANY, a Private Corporation, and Sylvester Farrell.	No. 393.	Summons.

18 The President of the United States of America to The Takou Mining and Milling Company, a private corporation, and Sylvester Farrell, the above-named defendant-, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Sitka, in said district, and answer the complaint filed against you in the above-entitled action within 20 days from the date of the service of this summons upon you, and if you fail so to appear and answer, for want thereof the plaintiff will apply to the court for the relief demanded in said complaint.

The said action is brought to obtain a decree of this court for the foreclosure of a certain mortgage described in the said complaint and executed by the said defendant, said Takou Mining and Milling Company, on the 20th day of August, 1889, to secure the payment of one certain promissory note; that the premises conveyed by said mortgage may be sold and the proceeds applied to the payment of said promissory note, and in case such proceeds are not sufficient to

pay the same, then to obtain an execution against said defendant, said Takou Mining and Milling Company, for the balance remaining due, and also that the said defendants and all persons claiming by, through, or under them may be barred and foreclosed of all right, title, claim, lien, equity of redemption, and interest in and to said mortgaged premises; for $250.00 attorneys' fees and costs of suit, and for other and further relief, as will more fully appear by reference to the complaint of file herein.

And this is to command you, the marshal of said district, or your deputy to make due service and return of this summons. Hereof fail not.

Witness the Honorable Warren Truitt, judge of said district court, and the seal of said court, affixed at Sitka, in said district, 21 day of December, 1893.

[CLERK'S SEAL.] N. R. PECKINPAGH, *Clerk.*

JOHN G. HEID,
Att'y for Plaintiff, Juneau, Alaska.

19 (The following return appears upon the summons:)

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

I hereby certify that the within summons came into my hands for service on the 22d day of December, 1893, and that after due and diligent search neither of the within-named defendants nor their agents could be found within this district.

Dated at Juneau, Alaska, this 2d day of January, 1894.

ORVILLE T. PORTER,
United States Marshal.
By MAX ENDELMAN,
Deputy United States Marshal.

Fees: Return of summons and comp., $2.00.

(Said summons was endorsed as follows:) No. 393. In the district court of the United States for the district of Alaska. Willis Thorp *vs.* The Takou Mining and Milling Company and Sylvester Farrell. Summons. Returned and filed January 5, 1894. N. R. Peckinpagh, clerk.

That on January 3, 1894, said Thorp filed with said clerk a paper, a copy of which is as follows, viz:

In the United States District Court for the District of Alaska.

WILLIS THORP, Plaintiff,
vs.
THE TAKOU MINING AND MILLING COMPANY and SYLVESTER FARRELL, Defendants.

UNITED STATES, *District of Alaska*, } *ss*:

John G. Heid, being duly sworn, says as follows:

1. I am the attorney for the plaintiff in the above-entitled suit. The reason why this affidavit is not made by the plaintiff in *propria persona* is that said plaintiff is, though a resident of Alaska, not at present within the district of Alaska; that the material allegations contained in the complaint filed herein come within my personal knowledge; that the complaint in said action or suit was duly filed with the clerk of this court on the — day of December, 1893, and summons thereupon issued, and the said action is brought for the purpose of obtaining a decree of this court for the foreclosure of a certain mortgage described in the complaint filed herein and executed by the said defendant, the said Takou Mining and Milling Company, on the 20th day of August, 1889, to secure the payment of a certain promissory note for the sum of $98,405.91 to one Samuel Coulter and assigned, sold, and set over by said Samuel Coulter to the plaintiff herein, the property and premises conveyed by said mortgage being the following-named lode claims and mining rights, situated on Gold creek, in Harris mining district and district of Alaska, to wit, the relocated Pilz No. 2 Lode claim, the Jewel Lode claim, the Grand Review Lode claim, the Golden Fleece Lode claim, the Lotta Lode claim, the Keystone Lode claim, the Juneau Lode claim, the Crown Point Lode claim, the Gold Hill Lode claim, the Capital Lode claim, the Takou Gold and Silver Lode claim, and the Takou Union Lode claim, together with all and singular the mill sites, flumes, and water rights thereto belonging or held in connection therewith. The cause of action is fully set forth in the verified complaint of plaintiff on file herein.

2. That the defendant the said Takou Mining and Milling Company is a foreign corporation, organized and existing under the laws of the State of Oregon, and has and owns said relocated Pilz No. 2 Lode claim, said Juneau Lode claim, said Gold Hill Lode claim, said Capital Lode claim, and said Takou Union Lode claim; that the defendant said Sylvester Farrell is not a resident of the district of Alaska, but resides in the city of Portland, Oregon, and owns (subject to said mortgage) the said Jewel Lode claim, said Grand Review Lode claim, said Golden Fleece Lode claim, said Lotta Lode claim, said Keystone Lode claim, said Crown Point Lode claim, and said Takou Gold and Silver Lode claim, which said last-mentioned lode claim the said defendant, Farrell, purchased from said defendant, said Takou Mining and Milling Company, subsequent to the execution of said mortgage.

3. That no officer of said defendant corporation, the said Takou

Mining and Milling Company, resides within the district of Alaska; that the said defendant corporation has no managing agent or representative within the said district of Alaska; that the president of said defendant corporation is Samuel Coulter, whose post-office address is No. 246 Washington street, Portland, Oregon; that the post-office address of said defendant, Sylvester Farrell, is Portland, Oregon, where said defendant, Farrell, resides; that affiant is ignorant of the residence number of said defendant, Farrell, if any he has.

4. That a summons was duly issued out of this court to the United States marshal for the district of Alaska, with directions to said U. S. marshal to serve the same upon said defendants, and the said U. S. marshal has returned the same to the clerk of this court with his return thereon indorsed to the effect that the said defendants or either of them could not be found in his district.

5. That the plaintiff herein has a good cause of action in this suit against the said defendant, as will fully appear by the verified complaint on file herein, to which reference is hereby made, and the said defendants, said Takou Mining and Milling Company and said Sylvester Farrell, are necessary and proper parties defendant thereto, as I verily believe.

6. Personal service of said summons cannot be made on the said defendant, and plaintiff therefor- demands an order that service of the same may be made by publication.

JOHN G. HEID.

Subscribed and sworn to before me this 3rd day of January, 1894.

[NOTARIAL SEAL.] F. D. KELSEY,
Notary Public for Alaska.

22 (Endorsed:) No. 393. In U. S. dist. court, dist. of Alaska. Willis Thorp *vs.* Takou M. & M. Co. and Sylvester Farrell. Affidavit for publication of summons. Filed Jan'y 5, 1894. N. R. Peckinpagh, clerk.

That *in* April 4, 1894, said Thorp filed with said clerk two papers, of which the following are copies, viz:

In the United States District Court for the District of Alaska.

WILLIS THORP, Plaintiff,
vs.
THE TAKOU MINING AND MILLING COMPANY and SYLVESTER FARRELL, Defendants. } Order.

Upon reading and filing the affidavit of John G. Heid, attorney for plaintiff herein, and it satisfactorily appearing therefrom to me, the judge of the district court of the United States for the district of Alaska, that the defendants reside out of this district and cannot after due diligence be found therein, and it appearing from the affidavit aforesaid that a cause of action exists in this action in favor of the plaintiff therein and against the said defendants, and that the said defendants, said Takou Mining and Milling Company and said

Sylvester Farrell, are necessary and proper parties defendant thereto, and it further appearing that a summons has been duly issued out of said court in this action, and that personal service of the same cannot be made upon the said defendants for the reasons hereinbefore contained and by the said affidavit made to appear, on motion of John G. Heid, Esq., attorney for plaintiff, it is ordered that the service of the summons in this action be made upon the defendants by publication thereof in the "Juneau City Mining Record," a newspaper published at Juneau, Alaska, hereby designated as the newspaper most likely to give notice to said defendants, that such publication be made at least once a week for 8 weeks.

23 And it further in like manner satisfactorily appearing to me that the residence of said defendant, Sylvester Farrell, is known to be at the city of Portland, the State of Oregon, and that the residence of the president of said defendant, said Takou Mining and Milling Company, to wit, Samuel Coulter, is known to be No. 246 Washington street, at the city of Portland, Oregon, it is ordered that a copy of the summons and a copy of the complaint in this action be forthwith deposited in the post-office, postpaid, directed to each of said defendants at their places of residence.

Dated January —, 1894.

WARREN TRUITT,
Judge of the United States District Court for the District of Alaska.

(Endorsed:) No. 393. In U. S. dist. court for dist. of Alaska. Willis Thorp *vs.* Takou M. & M. Co. and Sylvester Farrell. Order for publication of summons. Filed January 5, 1894. N. R. Peckinpagh, clerk.

District Court of the United States, District of Alaska.

WILLIS THORP
vs. } No. 393.
TAKOU M. & M. CO. and SYLVESTER FARRELL.

I hereby certify that in obedience of an order from the district court of the United States for the district of Alaska bearing date January 5, 1894, that I deposited in the post-office at Sitka, in said district, postpaid, on the 8th day of January, 1894, a copy of the complaint and summons addressed to Samuel Coulter, president Takou M. & M. Co., 246 Washington street, Portland, Oregon, and a copy of the complaint and summons addressed to Sylvester Farrell at Portland, Oregon.

ORVILLE T. PORTER,
U. S. Marshal.
By A. MEYER, *Deputy.*

Fees, $4.00.

24 (Endorsed:) No. 393. District court of U. S., dist. of Alaska. Willis Thorp *vs.* Takou M. & M. Co. and Sylvester Farrell. Marshal's certificate as to depositing copies of complaint and summons in post-office. Filed January 11, 1894. N. R. Peckinpagh, clerk.

That on April 4, 1894, said Thorp filed with the clerk of said court a paper, of which the following is a copy:

In the United States District Court for the District of Alaska.

WILLIS THORP, Plaintiff, *vs.* THE TAKOU MINING & MILLING COMPANY, a Private Corporation, and Sylvester Farrell, Defendants.	No. 393. Affidavit of Publication of Summons.

UNITED STATES, *District of Alaska,* } *ss:*

E. Otis Smith, of the town of Juneau, in the district of Alaska, being duly sworn, deposes and says as follows:

I. I am a citizen of the United States, and at all times hereinafter mentioned was over eighteen years of age, and am not a party to the above-entitled action.

II. I am the printer and publisher of the weekly newspaper printed and published in the town of Juneau, said district of Alaska, known as the "Juneau City Mining Record."

III. The summons of which the annexed is a printed copy was published in said newspaper once a week for nine consecutive weeks, commencing on the 13th day of January, 1894, and ending on the 17th day of March, 1894.

E. OTIS SMITH.

Subscribed and sworn to before me this 30th day of March, 1894.
[NOTARIAL SEAL.]
F. D. KELSEY,
Notary Public for Alaska.

25 *Summons.*

In the District Court of the United States for the District of Alaska.

WILLIS THORP *vs.* THE TAKOU MINING AND MILLING COMPANY, a Private Corporation, and Sylvester Farrell.	No. 393. Summons.

The President of the United States of America to The Takou Mining and Milling Company, a private corporation, and Sylvester Farrell, the above-named defendants, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Sitka, in said district, and answer the complaint filed against you in the above-entitled action within twenty days from the date of the service of this summons upon you, to wit, within twenty days from the 5th day of March, 1894, and if you fail so to appear and answer for want thereof the plaintiff will apply to the court for the relief demanded in the said complaint.

The said action is brought to obtain a decree of this court for the foreclosure of a certain mortgage described in said complaint and executed by the said defendant, said Takou Mining and Milling Company, on the 20th day of August, 1889, to secure the payment of one certain promissory note, that the premises conveyed by said mortgage may be sold and the proceeds applied to the payment of said promissory note, and in case such proceeds are not sufficient to pay the same, then to obtain an execution against said defendant, said Takou Mining and Milling Company, for the balance remaining due, and also that the said defendants and all persons claiming by, through, or under them may be barred and foreclosed of all right, title, claim, lien, equity of redemption, and interest in
26 and to said mortgaged premises for $250, attorney's fee, and costs of suit, and for other and further relief, as will more fully appear by reference to the complaint on file herein.

Order for publication made January 5th, 1894.

And this is to command you, the marshal of said district, or your deputy, to make due service and return of this summons. Hereof fail not.

Witness the Honorable Warren Truitt, judge of said district court, and the seal of said court affixed, at Sitka, in said district, this 5th day of January, 1894.

N. R. PECKINPAGH, *Clerk.*

J. G. HEID,
Att'y for Plaintiff, Juneau, Alaska.

(Endorsed:) No. 393. In U. S. dist. court, district of Alaska. Willis Thorp, pl'ff, *vs.* The Takou Mining and Milling Company and Sylvester Farrell, def't-. Affidavit of publication of summons. Filed April 4, 1894. Charles D. Rogers, clerk.

XI.

That on June 7, 1895, said Thorp filed with said clerk and had entered and spread upon the records of said court a paper, of which the following is a copy, viz:

In the District Court of the United States for the District of Alaska.

WILLIS THORP, Plaintiff, *vs.* TAKOU MINING AND MILLING COMPANY, a Corporation, and Sylvester Farrell, Defendants, and John W. Irvin, Plaintiff in Intervention.	No. 393. Judgement and Decree of Foreclosure and Sale.

This cause having this day been brought on to be heard upon the complaint filed herein and John W. Irvin having heretofore and on,
27 to wit, the 22nd day of January, 1894, filed his complaint in intervention in this action, claiming priority over the plaintiff's mortgage set forth and described in plaintiff's complaint, and the plaintiff having heretofore and on, to wit, the 2nd

day of January, 1895, duly served and filed his demurrer to the complaint in intervention of the said John W. Irvin, and said demurrer coming on regularly to be heard before Honorable Warren Truitt, judge of said court, at Juneau, on the 11th day of May, 1895; and—

Whereas the said demurrer was by the said court on the 29th day of May, 1895, sustained and an order sustaining said demurrer duly entered thereon on the 31st day of May, 1895, and in said order sustaining plaintiff's said demurrer complainant in intervention, John W. Irvin, was allowed to file an amended complaint in intervention on or before June 3rd, 1895, and he having this day filed an amended and supplemental complaint of intervention herein; and it appearing to the satisfaction of the court from due proofs that the defendants, The Takou Mining and Milling Company, a corporation, and Sylvester Farrell, were duly, regularly, and legally served with summons and complaint in this action; and—

It further appearing that the said defendants and each of them failed to appear, answer, or demur to the plaintiff's complaint herein and now on file in this action within the time allowed by law;

And the plaintiff herein having heretofore and on, to wit, the 4th day of May, 1894, at Sitka, Alaska, duly obtained and entered an order of default against the defendants, The Takou Mining and Milling Company and Sylvester Farrell, and the note and mortgage described in plaintiff's complaint herein having been on said 4th day of May, 1894, duly filed with the clerk of this court; and the plaintiff, Willis Thorp, and the complainant in intervention, John W. Irvin, having heretofore and on, to wit, June 3rd, 1895, entered into a stipulation, in which stipulation it is agreed that the plaintiff shall have judgement of foreclosure and sale of the premises mentioned and described in his said mortgage, and said stipulation having been duly filed with the clerk of this court thereafter
28 and on, to wit, June 4th, 1895; and—

The court having heard the proofs necessary to enable it to render judgement herein against the said defendants, The Takou Mining and Milling Company and Sylvester Farrell;

And the court having heretofore made its findings of fact and conclusions of law, and said findings of fact and conclusions of law having been duly filed with the clerk of this court; and—

It appearing from the proofs taken in this case and as found in the findings of fact and conclusions of law herein made and filed in this cause; and—

It appearing to the court that there is now due the plaintiff from the said defendant, The Takou Mining and Milling Company, for principal and interest upon the note and mortgage mentioned and set forth in the plaintiff's complaint herein—for principal the sum of ninety-eight thousand four hundred five and $\frac{91}{100}$ dollars ($98,405.91), together with interest on said principal sum, at eight per cent. per annum, from August 20th, 1889, now amounting to the sum of forty-four thousand five hundred eighty-four and $\frac{36}{100}$ dollars ($44,584.36), making an aggregate sum of both principal and interest now due of one hundred forty-two thousand nine hundred

ninety and $\frac{27}{100}$ dollars ($148,990.27), together with interest upon said sum of one hundred forty-two thousand nine hundred ninety-two and $\frac{27}{100}$ dollars ($142,990.27) from the date hereof at the rate of eight per cent. per annum:

Now, on this 7th day of June, A. D. 1895, this cause coming on to be heard upon motion of Messrs. Bostwick and Crews, attorneys for plaintiff, for judgement and decree of foreclosure and sale, and the court, being fully advised in the premises, now grants said motion.

Wherefore, by reason of the law and premises, it is hereby ordered, adjudged, and decreed by this court that the plaintiff have judgement against the defendant The Takou Mining and Milling Company for the sum of one hundred forty-two thousand nine hundred ninety and $\frac{27}{100}$ dollars ($142,990.27), principal and interest, together with costs and an attorney's fee of two hundred and fifty dollars ($250.00).

II.

It is hereby further ordered, adjudged, and decreed by the court that all and singular the mortgaged premises mentioned and described in plaintiff's complaint herein and hereinafter described, or so much thereof as may be sufficient to raise the amount due the plaintiff for principal, interest, and costs in the suit and expenses of sale, be sold at public auction by and under the direction of United States marshal for the district of Alaska, where said mortgaged premises are situated; that said sale be made at the front door of the court-house, in the town of Juneau, Alaska, near where said mortgaged premises are situated; that United States marshal for the district of Alaska give public notice of the time and place of such sale according to the course and practice of this court and the law relative to the sale of real estate under execution; that the plaintiff or any of the parties to this suit may become a purchaser at such sale, and that the said United States marshal for the district of Alaska, after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the mortgaged premises on the said sale, provided the deposit hereinafter mentioned shall have first been made with the clerk of this court.

III.

It is hereby further ordered, adjudged, and decreed by the court that the United States marshal out of the proceeds of said sale retain his fees, disbursements, and commissions on said sale and pay the plaintiff or his attorneys out of the proceeds his costs in this suit, taxed at twenty-five and $\frac{55}{100}$ dollars ($25.55), and the sum of two hundred and fifty dollars ($250.00) allowed by the court as attorneys' fees of foreclosure, with interest thereon from this date at the rate of eight per cent. per annum, and that the balance remaining in the hands of said United States marshal after the payment of the fees, commissions, disbursements, costs of suit, and attorneys' fees hereinafter mentioned be by him paid to the plaintiff

or his attorneys, same to be applied in payment or so much thereof as said proceeds of sale will pay of this decree.

IV.

It is hereby further ordered, adjudged, and decreed by this court that the defendant The Takou Mining and Milling Company, a corporation, Sylvester Farrell, and the plaintiff in intervention, John W. Irvin, and each of them, and all persons claiming or to claim from or under them or either of them, and all persons having liens subsequent to said mortgage or their personal representatives, and all persons having any lien or claim by or under such subsequent judgement or decree and their heirs and personal representatives and all persons claiming under them, and all persons claiming to have acquired any estate or interest in said premises subsequent to the execution of said note and mortgage described in the plaintiff's complaint herein be forever barred and foreclosed of and from all equity of redemption and claim in, of, and to said mortgaged premises and every part and parcel thereof from and after the delivery of the said United States marshal's deed.

V.

It is hereby further ordered, adjudged, and decreed by this court that the purchaser or purchasers of said mortgaged premises at said sale be let into possession thereof, and that any of the parties to this action who may be in possession of said premises or any part thereof and any persons who since the commencement of this action *has* come into possession under them or either of them deliver possession thereof to the purchaser or purchasers on production of the United States marshal's deed for such premises or any part thereof.

VI.

It is hereby further ordered, adjudged, and decreed by this
31 court that if the moneys arising from the said sale shall be insufficient to pay the amount so found to be due the plaintiff, as above stated, with interest, costs, attorneys' fees, and expenses of sale, as aforesaid, the United States marshal for the District of Alaska specify the amount of such deficiency and balance due the plaintiff in his return of sale, and that on the coming in of said return a judgement of this court shall be docketted for such balance against the defendant The Takou Mining and Milling Company, and that said defendant, Takou Mining and Milling Company, who is solely liable for the payment of the debt secured by the said mortgage, pay to the said plaintiff the amount of such deficiency and judgement, with interest thereon, at the rate of eight per cent. per annum, from the date of said last-mentioned return and judgement, and that the plaintiff have execution therefor.

VII.

It is hereby further ordered, adjudged, and decreed by this court that upon the sale of said mortgaged premises the purchaser or purchasers at such sale shall, before the sale be confirmed by the court,

deposit with the clerk of this court the sum of fifteen hundred dollars ($1,500.00), said sum to be held by the clerk of this court until the amended supplemental complaint in intervention of John W. Irvin has been heard and his rights finally determined thereunder, and upon the hearing and final determination of the rights of said complainant in intervention, if his right shall be adjudged to be prior and superior to the plaintiff's said mortgage, or if upon the trial of said complaint in intervention said note and mortgage shall be declared to be void, then the amount of the claims of complainant in intervention, John W. Irvin, as claimed and set forth in his amended and supplemental complaint herein, together with interest and costs of suit, shall be paid to him forthwith by order of this court from the said sum of money so deposited, as aforesaid, with the clerk of this court; but if his claim shall be finally decreed
32 to be subsequent and inferior to the lien of plaintiff's mortgage herein and said note and mortgage decreed not to be void as to the intervenor, John W. Irvin, then and in that event the complainant in intervention, John W. Irvin, shall have no right or claim to said money so deposited, as aforesaid, and the same shall belong to and by order of this court be paid to the plaintiff herein.

That the final determination of the complaint in intervention of said John W. Irvin shall not in any manner affect the title of the mortgaged premises herein ordered to be sold, but shall only affect the money so to be deposited in court, as aforesaid.

The discription and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage referred to or from the complaint filed in this action, are as follows:

The "Relocated Pilz No. 2" Lode claim, recorded in Book I of Quartz Locations, on page 9, of the records of said Harris mining district; also the "Jewel" Lode claim, recorded in Book I of Quartz Locations, page —, of the records of said Harris mining district; also the "Grand Review" Lode claim, recorded in Book I of Quartz locations, on page 23, of the records of said Harris mining district; also the "Golden Fleece" Lode claim, recorded in Book I of Quartz Locations, on page 59, of the records of said Harris mining district; also the "Lotta" Lode claim, recorded in Book I of Quartz Locations, on page —, of the records of said Harris mining district; also the "Keystone" Lode claim, recorded in Book B of Records, on page 20, of the records of Harris mining district; also the Juneau Lode claim, recorded in said Book B of Records, on page 21, of said records of said Harris mining district; also the Crown Point Lode claim, recorded in said Book B of Records, on page 35, of said records of said Harris mining district; also the Gold Hill Lode claim, recorded in said Book B of Records, on page 36, of the records of said Harris mining district; also the Capital Lode claim, recorded in said
33 Book B of Records, on page 62, of said records of said Harris mining district; also the Takou Gold and Silver Lode claim, recorded in Book "A" of Records, on page- 56 and 118 respectively, of the records of said Harris mining district; also the Takou Union Lode claim, recorded in said Book "A" of Records, on page- 56 and

119 respectively, of the records of said Harris mining district, less ten feet in and to said Takou Union lode, owned by Selim E. Woodworth. For greater certainty of discription of said lode claims reference is hereby made to said records of said Harris mining district—

Together with all and singular the mill sites, flumes and water rights, dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant and appurtenant or therewith usually had or enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to said premises and every part and parcel thereof, with the appurtenances.

Done in open court, at Juneau, Alaska, this 7th day of June, 1895.

WARREN TRUITT,
Judge of the District Court of the United States for the District of Alaska.

(Endorsed as follows:) Original, No. 393. In the district court of the United States for the district of Alaska. Willis Thorp, plaintiff, *vs.* The Takou Mining and Milling Co. *et al.*, defendants. Judgement and decree of foreclosure and sale. Filed Jan. 7, 1895. Charles D. Rogers, clerk. Bostwick & Crews, attorneys for plaintiff; office address, Juneau, Alaska. Copy of within judgement
34 received and due service of the same acknowledged this 6th day of June, 1895. John S. Bugbee, C. S. Blackett, attorneys for John W. Irvin.

XII.

That upon the said entry of said last-described paper said Thorp pretended and claimed that by virtue thereof and of the proceedings hereinbefore set out that he had obtained a good and valid decree of foreclosure against the Takou Mining and Milling Company and Sylvester Farrell, and by virtue thereof pretended that he was authorized and empowered to sell said mortgaged property to satisfy the amount due upon said mortgage, and did cause a pretended execution and order of sale to be issued by the clerk of said court, and did cause the same to be advertised for sale by said marshal, who pretended by virtue thereof to sell the same to satisfy the said sum due upon said mortgage.

XIII.

That on the 12th day of July, 1895, the said marshal, claiming to act under and pursuant to said pretended execution and order of sale, offered said mortgaged property for sale, and said Thorp offered and bid therefore the sum of seventy-five thousand dollars ($75,000.00), which said offer and bid said marshal accepted.

XIV.

That thereafter and on September 12, 1895, said Thorp filed with said clerk a paper, and at said date said Thorp caused said paper and the contents thereof to be entered and spread upon the records of said court, of which the following is a copy, viz:

In the District Court of the United States for the District of Alaska.

Willis Thorp, Plaintiff, vs. The Takou Mining and Milling Company and Sylvester Farrell, Defendants, and John W. Irvin, Plaintiff in Intervention.	No. 393.	Order Confirming Sale.

35 This cause coming on regularly to be heard upon motion of Bostwick and Crews, attorneys for the plaintiff, for an order confirming sale of real estate upon the return of Louis L. Williams, United States marshal for the district of Alaska, of his proceedings upon the real estate hereinafter described under an order of sale issued in the above-entitled cause heretofore and on, to wit, the 7th day of June, A. D. 1895; and the said Louis L. Williams, United States marshal for the district of Alaska, having made sale of said property on the 12th day of July, A. D. 1895, at two o'clock p. m. of that day, in front of the court-house, in the town of Juneau, district of Alaska; and the said Louis L. Williams, United States marshal for the district of Alaska, having made his return of sale of said real estate, and having filed the same with the clerk of the United States district court for the district of Alaska, at Sitka, Alaska, on the 15th day of July, A. D. 1895; and

It appearing to the satisfaction of the court that the said return of the said marshal was so made and filed by him with the clerk of said court at the time and day herein set forth; and

It further appearing that no objections have been made by the judgement debtors or by any of them or by any person or persons on their behalf to the said return, and that more than ten (10) days have elapsed since the making and filing of said return; and

That all of the proceedings had about and upon said sale have been in all respects regular and in accordance *to* the statute in such case made and provided; and

It further appearing to the satisfaction of the court that Louis L. Williams, United States marshal for the district of Alaska, did, on the 12th day of July, A. D. 1895, offer said property for sale in front of the court-house, in the town of Juneau, Alaska, at two o'clock p. m. of said day, and that the plaintiff in said action, Willis Thorp, was the highest and best bidder, and that the sum bid by the said Willis Thorp, plaintiff, was the highest and best sum bid for said property; and

36 The court being fully advised in the premises, it is now, on motion of said plaintiff, by his attorneys, Messers. Bostwick and Crews, by the court here and now—

Considered, ordered, adjudged, and decreed that the real estate upon said order of sale and said return of said marshal mentioned and described and herein mentioned and described as follows, to wit:

The "Relocated Pilz No. 2" Lode claim, recorded in Book I of Quartz Locations, on page 9, of the records of said Harris mining district; also the "Jewel" Lode claim, recorded in Book I of Quartz Locations, on page —, of the records of said Harris mining district; also the "Grand Review" Lode claim, recorded in Book I of Quartz Locations, on page 23, of the records of said Harris mining district; also the "Golden Fleece" Lode claim, recorded in Book I of Quartz Locations, on page 59, of the records of said Harris mining district; also the "Lotta" Lode claim, recorded in Book I of Quartz Locations, on page —, of the records of said Harris mining district; also the "Keystone" Lode claim, recorded in Book B of Records, on page 20, of the records of said Harris mining district; also the "Juneau" Lode claim, recorded in said Book B of Records, on page 21, of said records of said Harris mining district; also the "Crown Point" Lode claim, recorded in said Book B of Records, on page 35, of said records of said Harris mining district; also the "Gold Hill" Lode claim, recorded in said Book B of Records, on page 36, of the records of said Harris mining district; also the "Capital" Lode claim, recorded in said Book B of Records, on page 62, of said records of said Harris mining district; also the "Takou Gold and Silver" Lode claim, recorded in Book A of Records, on page 56 and 118 respectively, of the records of said Harris mining district; also the "Takou Union" Lode claim, recorded in said Book A of Records, on page 56 and 119 respectively, of the records of said Harris mining district, less ten feet in and to said Takou Union Lode claim, owned by Selim E. Woodworth. For greater certainty of discription of said
37 lode claim reference is hereby made to said records of said Harris mining district—

Together with all and singular the mill sites, flumes, and water rights, dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said defendant of, in, and to said premises and every part and parcel thereof—

Was by said Louis L. Williams, United States marshal for the district of Alaska, sold to Willis Thorp, plaintiff in this action, for the sum of seventy-five thousand dollars ($75,000.00), and—

That the return of said marshal thereof be, and the same is hereby, in all respects approved and confirmed, and—

That the said Willis Thorp is entitled to and may forthwith enter into possession and upon said property by him purchased, as afore-

said, and that he may receive any rent or rents from any tenent or tenents now lawfully in possession of the same.

That the said Willis Thorp is entitled to a deed of said premises from Louis L. Williams, United States marshal for the district of Alaska, after the expiration of the time allowed by law for the redemption of said premises.

Done in open court this 12th day of September, A. D. 1895.

WARREN TRUITT,
Judge of the U. S. District Court for the District of Alaska.

(Endorsed:) Original. No. 393. In the district court of the United States for the district of Alaska. Willis Thorp, plaintiff, *vs.* The Takou Mining and Milling Co. *et al.*, defendants. Order confirming sale. Filed Sept. 12, 1895. Charles D. Rogers. Bostwick & Crews, attorneys for the plaintiff; office address, Juneau, Alaska.

38

XV.

That immediately after said pretended sale said Thorp entered into possession of all said property, and shortly thereafter pretended to sell said property and surrendered the possession thereof to these defendants, who ever since have been and now are in the possession of all of said property, receiving the income and the profits therefrom.

XVI.

That on or about the fourth day of September, 1898, said Sylvester Farrell and wife and said Takou Mining and Milling Company sold and conveyed all of said property to this plaintiff, who now owns the same.

XVII.

That no suit was ever commenced in any court nor was any proceedings attempted to foreclose said mortgage other than the proceedings above described, and that the defendants have no interest in said property nor any claim thereto except as hereinbefore described.

XVIII.

That no jurisdiction was ever obtained by said or any court in any suit or proceeding to foreclose said mortgage or to bar or divest the interest of said Farrell or this plaintiff or said Takou Mining and Milling Company in said property.

XIX.

That while said Thorp and these defendants have been in possession of said property they have received in the profits and income therefrom a sum equal to the amount of said mortgage and the interest thereon, except the sum of $1,000, which sum only is now due thereon and which said sum this plaintiff now offers to pay.

39

XX.

That there was no district court of the United States for the district of Alaska at the time said proceedings were had, and plaintiff alleges that neither the complaint nor the affidavit for the order of publication of summons or subpœna nor the summons nor subpœna published nor the order of publication nor the proof of publication of summons nor the proof of deposit in the post-office of a summons or subpœna and complaint *are* in accordance with the statutory requirements of the laws of Oregon or of the district of Alaska or of the United States in force at the time of said proceedings, and that no valid summons or subpœna was ever issued or served, personally or otherwise, upon said Sylvester Farrell or upon said Takou Mining and Milling Company, nor was any valid judgement or decree ever rendered against them *or* in the matter or proceedings hereinbefore described.

Prayer.

The plaintiff therefore asks a decree against defendants:

1st. That said defendants be declared to be mortgagees in possession of said property.

2nd. That the defendants have been fully paid the amount of said mortgage and the interest thereon, except the sum of $1,000 which they and said Thorp received from the profits and income from said property while the same was in their possession, or, if not so paid, that an accounting be had to ascertain the amount.

3rd. That the defendants vacate said property and surrender the possession thereof to this plaintiff, and that the pretended decree of foreclosure be annulled and set aside.

4th. That plaintiff recover his costs and disbursements in this suit from defendants.

W. SCOTT BEEBEE,
Attorneys for Plaintiff.

40 STATE OF OREGON, } ss:
County of Multnomah, }

I, D. Marx, being first duly sworn, say that I am the plaintiff herein, and that the foregoing complaint is true, as I verily believe.

DAN. MARX.

Subscribed and sworn to before me this 19th day of October, 1898.

K. E. PARKER,
Notary Public for Oregon.

[NOTARIAL SEAL.]

STATE OF OREGON, } ss:
County of Multnomah, }

I, H. H. Holmes, clerk of the county court of the State of Oregon for the county of Multnomah, do hereby certify that said court is a court of record, and that K. E. Parker, whose signature is affixed to the foregoing certificate of acknowledgement, was at the time of signing the same, to wit, the 19 day of Oct., A. D. 1898, a notary

public in and for said county and State, duly authorized and empowered by law to take and certify acknowledgements and administer oaths; that I am well acquainted with the handwriting of the said K. E. Parker and believe his signature subscribed thereto to be genuine, and that full faith and credit are due to his official acts, and that the said instrument is executed and acknowledged according to the laws of the State of Oregon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 19 day of Oct., A. D. 1898.

[OFFICIAL SEAL.] H. H. HOLMES,
Clerk of County Court,
By W. G. STIMSON, *Deputy.*

[10-cent internal-revenue documental stamp.]

(Said complaint is endorsed as follows:) No. 784. In the district court for the district of Alaska. Dan. Marx *vs.* W. M. Ebner *et al.*, defendant-. Complaint. Filed Nov. 12, 1898. Albert D. Elliot, clerk. W. Scott Beebee, pl't'f's att'y.

41 And afterwards, on the 12th day of November, 1898, the following further proceedings were had, which are in the words & figures following, to wit:

In the District Court for the District of Alaska.

D. MARX, Plaintiff,
vs.
THE EBNER GOLD MINING COMPANY and W. M. EBNER, Defendants.

The President of the United States of America to the Ebner Gold Mining Company and W. M. Ebner, Greeting:

You are hereby commanded that you appear before district court for the district of Alaska within twenty days from the date of the service of this subpœna upon you to answer the bill of complaint exhibited against you in said court by D. Marx, the above-named complainant, and to further receive whatever the said court shall consider in that behalf, and this you are — to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court, this 12 day of November, 1898.

[CLERK'S SEAL.] ALBERT D. ELLIOT, *Clerk.*

[10-cent revenue stamp.]

W. SCOTT BEEBEE,
Solicitor for Complainant.

MEMORANDUM.—The defendant- *is* to enter *his* appearance in the suit above mentioned in the clerk's office at Sitka, Alaska, on or be-

fore the date at which the above subpœna is returnable; otherwise the bill will be taken *pro confesso*.

W. SCOTT BEEBEE,
Solicitor for Complainant.

(Endorsed:) No. 784. In the district court for the district of Alaska. D. Marx, plaintiff, *vs.* The Ebner Gold Mining Company and W. M. Ebner, defendants. Subpœna. Returned and filed Nov. 12, 1898. Albert D. Elliot, clerk. W. Scott Beebee, solicitor for complainant.

42 (Said subpœna is further endorsed as follows:) In United States dist. court, dist. of Alaska. I hereby certify that I received the within subpœna on 12th day — November, 1898, and served the same by delivering to W. M. Ebner a true copy, together with a true and correct copy of complaint, in Juneau, Alaska, Nov. 12th, 1898. James M. Shoup, U. S. marshal, by W. S. Staley, deputy.

43 And afterwards the following further proceedings were had on the 15 day of November, 1898, & are in words & figures following, to wit:

In the United States Court for the District of Alaska.

D. MARX, Plaintiff,
vs.
THE EBNER GOLD MINING COMPANY and WM. M. EBNER, Defendants. } No. —. Motion.

Comes now the above-named defendants, by and through their attorney, W. E. Crews, and, making a special appearance for the sole and only purpose of this motion, moves this honorable court to quash the summons and to strike the complaint from the files in this cause, for the reason that said complaint and summons are not entitled in any court known to the laws or practice in the district of Alaska, and for the further reason that said summons cites the defendants to appear in the district court for the district of Alaska, and that there is no such court in said district recognized by the laws or the practice thereof.

W. E. CREWS,
Attorney for Defendants.

Due and legal service of the within motion is hereby admitted.

W. S. BEEBEE,
Att'y for Pl't'f.

(Endorsed:) No. 784. U. S. district court Alaska. D. Marks *vs.* Ebner Gold Mining Co. and Wm. M. Ebner. Motion. Filed Nov. 15, 1898. Albert D. Elliot, clerk. W. E. Crews, attorney for defendants.

44 And afterwards, to wit, on November 15 & November 23, 1898, the following further proceedings were — and appear of record in said cause:

(The following journal entries appear under the respective dates given.)

D. MARKS, Pl'ff,
vs.
THE EBNER GOLD MINING COMPANY & WM. M. Ebner, Def'ts. } (Nov. 15th, 1898.) No. 784.

Now, at this day, this cause coming on to be heard upon the motion of defendants to quash the summons and to strike the complaint from the files in this cause, W. E. Crews, Esq., appearing especially for said purpose in support of said motion, and W. Scott Beebee appearing as attorney for the plaintiff, in opposition thereto, and being argued by counsel, and the court, being fully advised in the premises, sustains said motion and plaintiff is allowed to amend said pleadings by interlineation and file instanter.

D. MARX, Plaintiff,
vs.
THE EBNER GOLD MINING COMPANY and W. M. Ebner. } (Nov. 23, 1898.) No. 784. Order Taking under Advisement.

Now, at this day, the demurrer of the above-named defendants to the plaintiff's bill of complaint filed herein coming on to be heard, the defendants appearing by W. E. Crews, Esq., their attorney, for said demurrer, and the plaintiff appearing by W. Scott Beebee, Esq., his attorney, in opposition thereto, & being argued by counsel, & the court, not being sufficiently advised, takes the same under advisement, & parties are each given twenty days to file briefs herein.

45 And afterwards, to wit, on the 23 day of November, 1898, the further following proceedings were had & appear of record, to wit:

In the United States District Court for the District of Alaska.

D. MARX, Plaintiff,
vs.
THE EBNER GOLD MINING COMPANY and William M. Ebner, Defendants. } No. —. Demurrer.

The demurrer of the above-named defendants, The Ebner Gold Mining Company and William M. Ebner, to the bill of complaint of the above-named plaintiff.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are set forth, doth demur to the said bill, and for cause of demurrer sayeth:

I.

That said bill does not state facts sufficient to constitute a cause of suit against these defendants.

II.

That it appears by the plaintiff's own showing by the said bill of complaint that he is not entitled to the relief prayed for by the bill against the defendants.

III.

That there are no direct and positive allegations of fact alleged or set forth in said bill upon which a decree in accordance with the prayer thereof might or could be based.

IV.

That it is shown by said bill that the relief sought is based upon mere conclusions of law and not on fact.

Wherefor-, and for divers other good causes of demurrer appearing on said bill, these defendants do demur thereto, and they pray the judgement of this honorable court whether they shall be com-
46 pelled to make answer to the said bill, and they humbly pray to be dismissed hence with reasonable costs in their behalf sustained.

W. E. CREWS,
Solicitor and Counselor for the Defendants,
The Ebner Gold Mining Co. and Wm. M. Ebner.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

W. E. CREWS,
Counsel for Defendants.

UNITED STATES OF AMERICA, } ss:
District of Alaska, }

William M. Ebner, being first duly sworn, deposes and says that he is one of the defendants above named, and that the foregoing demurrer is not interposed for delay.

WM. M. EBNER.

Subscribed and sworn to before me this 22 day of November, 1898, notary public for Alaska.

C. S. BLACKETT,
Notary Public.

Due and legal service of the within demurrer is hereby accepted.

W. S. BEEBEE,
Att'y for Pl'ff.

(Endorsed:) No. 784. U. S. district court, Alaska. D. Marx *vs.* Ebner Gold Mining Co. and Wm. M. Ebner. Demurrer. Filed Nov. 23, 1898. Albert D. Elliot, clerk. W. E. Crews, attorney for defendants.

47 And afterwards, to wit, on the 6th day of January, 1899, the following further proceedings were had and appear of record, to wit:

In the United States District Court for the District of Alaska.

D. MARX, Plaintiff,
vs.
WM. M. EBNER and THE EBNER GOLD MINING COMPANY, Defendants. } Order.

Now, on this day, this cause coming on to be heard upon the demurrer of the defendants, William M. Ebner and The Ebner Gold Mining Company, a corporation, to the bill of complaint of the plaintiff, and after hearing the arguments of counsel for the defendant- and for the plaintiff and an examination of the authorities in support of the contentions, and the court being otherwise fully advised in the premises—

It is ordered, adjudged, and decreed that said demurrer be, and the same is, in all respects fully sustained, and the counsel for the plaintiff having stated in open court that he did not desire to plead further, but intended to stand upon the bill as it now is—

It is further ordered and adjudged that said bill of complaint be, and the same is hereby, dismissed.

It is further adjudged, upon the stipulation of counsel in open court, that the amount in controversy herein and that said property involved and discribed in said bill of complaint exceeds in value the sum of five thousand dollars ($5,000.00).

Done in open court this 6th day of January, 1899.

CHARLES S. JOHNSON, *Judge.*

(Endorsed:) No. 784. In the district court of the United States for the district of Alaska. D. Marx, plaintiff, *vs.* Wm. M. Ebner and The Ebner Gold Mining Co., defendant-. Order. Filed Jan. 6, 1899. Albert D. Elliot, clerk. W. E. Crews, attorney for defendants; office, Juneau, Alaska.

48 And afterwards, to wit, on the 23 day of May, 1899, the following further proceedings were had & appear of record in this cause, to wit:

In the District Court of the United States in and for the District of Alaska.

D. MARX, Plaintiff,
vs.
WM. M. EBNER and THE EBNER GOLD MINING COMPANY, Defendants.

Assignment of Errors.

Now comes the above-named plaintiff, D. Marx, and files this his assignment of errors, which he will urge upon the appeal of this cause in the Supreme Court of the United States, viz:

I.

The court erred in deciding that plaintiff was not entitled to a decree in his favor upon the case-made in his complaint.

II.

The court erred in deciding that the court obtained jurisdiction to render a decree in the case of Willis Thorp *vs.* Sylvester Farrell and The Takou Milling and Mining Company, the record — which is disclosed and contained in plaintiff's complaint.

III.

The court erred in sustaining the defendants' demurrer to plaintiff's complaint.

IV.

The court erred in deciding that the plaintiff's complaint should be dismissed and in dismissing the same.

V.

The court erred in deciding that it appeared from the affidavit for the order of publication or the record in said case that
49 personal service of process on defendants was not practicable, and that personal service of summons or subpœna could not be made upon defendants or their officers, agents, or clerks within the district of Alaska, or that due diligence was exercised to find and serve defendants within said district of Alaska.

VI.

The court erred in deciding that the summons or subpœna attempted to be served in said cause and not the order of the court was the process or notice required by law to obtain jurisdiction to render the decree therein.

VII.

The court erred in deciding that the publication of the subpœna or summons published in said cause conferred jurisdiction upon the court to render a decree therein.

VIII.

The court erred in deciding that the proof of service or of deposit in the post-office was sufficient to confer jurisdiction in said case.

IX.

The court erred in deciding that the general laws of Oregon instead of the laws of the United States and the rules of the Supreme Court of the United States *was* the proper pro*proce*dure to confer jurisdiction in said case.

X.

The court erred in deciding that it was not necessary to publish an order of the court in said case, as required by the practice in the United States circuit and district courts.

XI.

The court erred in deciding that the affidavit or showing for the order of publication or the order of publication or the subpœna or summons attempted to be served or published in said case or the proof of service or deposit in the post-office was sufficient to
50 confer jurisdiction upon the court in said cause of Willis Thorp *vs.* Sylvester Farrell and The Takou Milling and Mining Company.

Wherefore the said plaintiff prays that because of said errors that the same may be considered by the Supreme Court of the United States, and that a decision may be there made granting plaintiff the relief prayed for in his complaint, and that the decision and decree of this court may be reversed.

W. SCOTT BEEBEE.
Attorney for Plaintiff.

(Endorsed:) No. 784. In the district court of the United States for the district of Alaska. D. Marx, plaintiff, *vs.* Wm. M. Ebner and The Ebner Gold Mining Company, defendants. Assignment of errors. Filed May 23, 1899. Albert D. Elliot, clerk. W. Scott Beebee, attorney for plaintiff.

51 And afterwards, to wit, on the 24 day of May, 1899, the following further proceedings were had and appear of record in this cause:

In the District Court of the United States for the District of Alaska.

D. MARX, Plaintiff,
vs.
WM. M. EBNER and THE EBNER GOLD MINING COMPANY, Defendants.

Now, on this the 24 day of May, 1899, comes the above-named plaintiff, by W. S. Beebee, his attorney, and moves the court for an order and allowance of an appeal in this cause to the Supreme Court of the United States, and the court being now advised—

It is ordered that said appeal be, and the same is now, allowed as prayed for.

CHARLES S. JOHNSON,
District Judge, District of Alaska.

(Endorsed:) No. 784. In U. S. dist. court for Alaska. D. Marx, pl't'f, *vs.* Wm. M. Ebner *et al.*, def'ts. Order of appeal. Filed May 24, 1899. Albert D. Elliot, clerk. W. S. Beebee, att'y for pl't'f.

52 And afterwards, on the 24 day of May, 1899, the following further proceedings were had & appear of record in said cause:

(MAY 24TH, 1899.)

D. MARX
vs.
THE EBNER GOLD MINING COMPANY & W. M. EBNER. } No. 784.

Order Allowing Appearance.

On motion of Robert A. Friedrich, Esq., it is ordered by the court that he be entered of record as associate counsel for defendant- in the above-entitled cause.

53 And afterwards, to wit, on the 24 day of May, 1899, the further following proceedings were had & appear of record, to wit:

D. MARX, Plaintiff,
vs.
WM. M. EBNER and THE EBNER GOLD MINING COMPANY, Defendant-.

On motion of W. S. Beebee, attorney for the plaintiff, heard upon a petition filed herein, it is ordered that the appeal prayed for be, and the same is, allowed, and it is further ordered that the time for filing the transcript and record on appeal with the clerk of the supreme court be, and the said time is, extended sixty days, making in all four months from the date of the citation. It is further ordered that the bond on appeal be in the sum of two hundred and fifty dollars, to be approved by the court.

CHARLES S. JOHNSON,
District Judge.

(Endorsed:) No. 784. D. Marx, pl't'f, *vs.* Wm. M. Ebner *et al.*, def'ts. Order. Order granting petition on motion. Filed May 24, 1899. Albert D. Elliot, clerk. W. S. Beebee, att'y for pl't'f.

54 And afterwards, to wit, on the 9th day of June, 1899, the following further proceedings were had & appear of record in this cause, to wit:

In the District Court of the United States for the District of Alaska.

D. MARX, Plaintiff,
vs.
WM. M. EBNER and THE EBNER GOLD MINING COMPANY, Defendants.

Know all men by these presents that we, Dan. Marx, of Portland, Oregon, plaintiff and appellant, and Ben. Selling, of ——, are held and firmly bound unto William M. Ebner and the Ebner Gold Mining Company in the sum of two hundred and fifty dollars ($250.00), to be paid to the same William M. Ebner and the said Ebner Gold Mining Company; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 29 day of May, A. D. 1899.

Whereas the above-named Dan. Marx has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the district of Alaska:

Now, therefor-, the condition of this obligation is such that if the above-named Dan. Marx shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

DAN. MARX.
BEN. SELLING.

Sealed and delivered, taken and acknowledged this 29 day of May, 1899, before me.

[NOTARIAL SEAL.]

A. P. TIFT,
Notary Public for Oregon.

The above bond on appeal approved by me this 29 day of May, 1899.

55

CHARLES B. BELLINGER,
District Judge for the District of Oregon.

The above bond taken and approved by me this the 9th day of June, 1899.

CHARLES S. JOHNSON,
District Judge for Alaska.

(Endorsed:) No. 784. In U. S. dist. court for dist. of Alaska. D. Marx, pl'ff, *vs.* Wm. Ebner *et al.*, def'ts. Cost bond. Filed Jun 9, 1899. Albert D. Elliot, clerk.

56 And afterwards, to wit, on the 23 day of June, 1899, the following further proceedings were had & appear of record in said cause, to wit:

In the United States District Court for the District of Alaska.

D. MARX, Plaintiff,
vs.
WM. M. EBNER and THE EBNER GOLD MINING COMPANY, Defendants.

To William M. Ebner and The Ebner Gold Mining Company:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 2d Monday of October, 1899, pursuant to an appeal filed in the clerk's office of the United States district court for the district of Alaska, wherein D. Marx is appellant and you, William M. Ebner and The Ebner Gold Mining Company, are respondents, to show cause, if any there be, why the judgement in the said appeal mentioned should not be corrected and reversed and speedy justice should be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States Supreme Court, this the 23rd day of June, A. D. 1899.

CHARLES S. JOHNSON,
District Judge.

Due personal service of a copy of the foregoing citation is hereby admitted and acknowledged to have been made on me at Juneau, Alaska, on the 23 day of June, 1899.

W. E. CREWS,
Attorney for Defendants and Respondents.

(Endorsed:) No. 784. In U. S. dist. court, district of Alaska. D. Marx, pl'ff, *vs.* Wm. Ebner *et al.*, def'ts. Citation. Filed June 23, 1899. Albert D. Elliot, clerk.

57 *Clerk's Certificate to Transcript.*

UNITED STATES OF AMERICA, *District of Alaska*, } ss:

I, Albert D. Elliot, clerk of the district court of the United States of America for the district of Alaska, do hereby certify that the foregoing pages, numbered from one to 57, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of D. Marx, plaintiff, *vs.* The Ebner Gold Mining Company and W. M. Ebner, defendants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the town of Sitka, in said district, the 17th day of July, A. D. 1899.

[Seal United States District Court, Alaska.]

ALBERT D. ELLIOT, *Clerk*,
By JOSEPH J. ROGERS, *Deputy*.

58 In the United States District Court for the District of Alaska.

D. MARX, Plaintiff,
vs.
WM. M. EBNER and THE EBNER GOLD MINING COMPANY, Defendants.

To William M. Ebner and the Ebner Gold Mining Company:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the 2d Monday of October, 1899, pursuant to an appeal filed in the clerk's office of the United States district court for the district of Alaska, wherein D. Marx is appellant and you, William M. Ebner and The Ebner Gold Mining Company, are respondents, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and reversed and speedy justice should be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States Supreme Court, this the 23rd day of June, A. D. 1899.

CHARLES S. JOHNSON,
District Judge.

Due personal service of a copy of the foregoing citation is hereby admitted and acknowledged to have been made on me at Juneau, Alaska, on the 23 day of June, 1899.

W. E. CREWS,
Attorney for Defendants and Respondents.

[Endorsed:] No. 784. In U. S. dist. court, district of Alaska. D. Marx, pl'ff, *vs.* Wm. Ebner *et al.* al., def't's. Citation. Filed Jun 23, 1899. Albert D. Elliot, clerk.

Endorsed on cover: File No., 17,499. Alaska D. C. U. S. Term No., 126. D. Marx, appellant, *vs.* William M. Ebner and The Ebner Gold Mining Company. Filed August 26th, 1899.